

GENERAL CONDITIONS OF THE CONTRACT

DEPARTMENT OF ADMINISTRATION

STATE OF MONTANA

Article I - Contract Documents

A. Contract Documents

The Contract Documents consist of the Invitation For Bids, Instruction to Bidders, Contract, General Conditions, Supplementary General Conditions, Specifications for Work, Drawings, Bid, all Addenda issued prior to bidding, and any Change Orders.

Should conflicts arise between or among the various sections of the Contract Documents including the interpretation of such, the following order of governing is established:

1. Agreement Between Contractor and Owner
2. Addendum
3. Proposal
4. Supplementary General Conditions
5. General Conditions
6. Specifications For Work
7. Drawings
8. Instructions To Bidders
9. Invitation To Bid

B. The Work

The Work comprises the completed construction required by the Contract Documents and includes all labor, material, equipment, and services necessary to complete the construction.

C. Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complimentary and what is required by one shall be as binding as if required by all.

Article II - Owner

A. Definition

The Owner is the State of Montana acting by and through its Administrator, Architecture &

Engineering Division, Department of Administration.

B. Owners Right to Award Separate Contracts

The Owner reserves the right to award separate contracts in connection with other portions of the project or other work on the site under these or similar conditions of the contract.

C. Owner's Right to Stop Work

If the Contractor fails to carry out the work in accordance with the Contract Documents or fails to correct defective work, the Owner may, after seven (7) days written notice to the Contractor and his surety, order the Contractor to stop the work until such deficiencies are corrected or may terminate the Contractor's contract and take possession of all materials and equipment and proceed to complete the work. All funds due the Contractor according to the contract shall be used to pay for completing the work. Funds remaining after completion of the work shall be paid to the Contractor. If additional funds are needed to complete the work, the Contractor shall pay the difference.

D. Termination of Contract

Should the Owner find his requirements suddenly changed and the Contract no longer valid to his operation, he may terminate the contract by giving written notice to the Contractor. Upon this notice the Contractor shall cease all work, itemize his expense to date including a reasonable profit on these expenses and submit his statement to the Owner for approval. That payment shall constitute final settlement of the terminated contract.

E. Access to Site

The Owner and his authorized representative will have access to the work at all times and the Contractor shall provide facilities for such access.

Article III - Contractor

A. Definition

The Contractor is the person, firm or corporation identified in the Standard Form of Contract Between Contractor and Owner or his authorized representative.

B. Existing Conditions

By executing the Contract, the Contractor certifies that he has visited the site, familiarized himself with the local conditions under which the work is to be performed and correlated his observations with the requirements of the Contract Documents.

C. Supervision

The Contractor shall supervise and direct the work and shall be responsible for the acts, omissions and discipline of his employees, subcontractors and their employees and other persons performing any of the work under a contract, whether written or verbal, with the Contractor.

D. Taxes, Permits, Fees

The Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.

E. Limits of the Work

The Contractor shall confine his operations to the immediate vicinity of the work and shall not extend any operations beyond the limits of the work without the Owner's permission. This shall include, but is not limited to, storage of materials, prefabrication of components, offices, employee break areas, loading and unloading areas.

F. Shop Drawings and Approvals

The contractor shall review, approve, and submit to the Architect/Engineer ALL shop drawings, schedules, samples and approvals required by the Contract Documents *within thirty (30) calendar days of being issued the Notice To Proceed* unless extended by the Architect/Engineer. Approval of shop drawings, schedules and samples by the Architect/Engineer shall not relieve the Contractor of the responsibility of the requirements of the Contract Documents unless specifically approved in writing by the Architect/Engineer. No work requiring the submittal of shop drawings, schedules, samples or approvals shall be commenced until such submittals have been approved by the Architect/ Engineer.

G. Substitution of Material

All material and equipment specified by manufacturer's name, brand or number is so identified for the purpose of establishing a standard. Any material or equipment which will adequately perform the duties imposed by the general design will be considered. All such substitutions will be submitted to the Architect/Engineer with sufficient data for comparison and no substitutions shall be purchased or installed without written approval from the Architect/Engineer.

H. "Or Equal" Specifications

It shall be the responsibility of the Contractor to provide data or other proof that products substituted under the "or equal" provisions of the product specifications are, in fact, of equal

quality, appearance, and function. Material or equipment with a "prior approved equal" status must be approved by the Architect/Engineer prior to the bid opening.

I. Time of Submittal

All substitutions requiring prior approval shall be submitted at least ten (10) days prior to bid opening. All other substitutions shall be submitted not more than twenty (20) days after the date of the "Notice to Proceed".

J. Demolition and Debris

The Contractor shall at all times keep the premises free from the accumulation of rubbish and other waste material. Unless otherwise specified, all material and equipment removed during demolition and not specified to be reused or salvaged by the Owner, shall become property of the Contractor and shall be removed from the premises promptly.

Article IV - Work

A. Labor and Materials

Unless otherwise specified, the Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work.

B. Material and Equipment

Unless otherwise specified, all material and equipment provided by the Contract Documents shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

C. Hiring Preference and Montana Products Preference

1. Products manufactured or produced in the State of Montana by Montana industry and labor shall be preferred for use in this project and in all materials, supplies, and equipment procured if such products, materials, equipment, and supplies are comparable in price and quality as prescribed in 18-1-112, Montana Code Annotated.
2. For state construction projects within an Indian reservation, hiring preference will be given to Indian residents of the reservation who have substantially equal qualifications for any position. This preference will apply unless federal law specifically prohibits residency preference.

D. Protection of Persons and Property

1. Safety and Protection: The Contractor shall take all reasonable precautions to prevent injury or loss to the work, adjacent property, the public and all employees on the work or other persons affected thereby.
2. Barricades and Signs: The Contractor shall erect and maintain, warning signs, barricades and other reasonable safeguards for safety and protection as required by law and the conditions and progress of the work.
3. Emergencies: In the event of any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent any damage or loss. Any claim by the Contractor for additional compensation or extension of time shall be submitted to the Owner for consideration as provided by Article V.

E. Warranty

The warranty period shall be defined as commencing with Substantial Completion of the project and continuing for one (1) year after the date of Final Completion. If, during the period between Substantial Completion and Final Completion or within one (1) year after the date of Final Completion, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, upon receiving written notice from the Owner, correct any work beginning within seven (7) calendar days of said written notice. Should the Contractor fail to respond to the written notice within the designated time, the Owner may correct the work at the expense of the Contractor.

Article V - Changes in Work

A. Change Order

The Owner may order changes in the work with the contract sum and/or contract time being adjusted accordingly by a written Change Order. A Change Order will be on a form required and provided by the Owner and will be the only authorized adjustment to the contract sum and contract time allowed after the execution of the Owner-Contractor Agreement.

1. No changes to the work by the Contractor will be authorized until written approval of the Change Order has been received from the Owner.
2. Contractor shall provide a complete breakdown of all costs relating to each Change Order. The breakdown shall include hourly rates and unit costs as well as a complete description of all work involved.
3. The cost or credit to the Owner resulting from a change in the Work shall be determined as follows:

By actual cost as shown by the contractor's invoices, plus 5% allowance for overhead, plus 10% allowance for profit.

Cost shall be limited to the following: Cost of materials, including cost of delivery; Cost of labor, including social security, old age and unemployment insurance and fringe benefits under collective bargaining agreements; Workers' Compensation insurance; Bond premiums; Rental value of power tools and equipment.

4. All Change Orders shall be signed by the Contractor before submittal to the Architect/Engineer. Approval by the Contractor's Surety and Surety's Licensed Agent is also required if the cumulative Change Orders exceed ten percent (10%) of the original contract sum.

B. Change Directive

A Change Directive is a written order prepared by the Architect/Engineer and signed by the Owner and Architect/Engineer, directing a change in the Work. The Owner may, by Change Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions. The Contract Sum and/or Contract Time may be adjusted.

Article VI - Payments and Completion

A. Contract Sum

The Owner shall pay the Contractor the amount stated in the Agreement and the amount of all authorized and approved Change Orders for the performance of the work under the Contract Documents.

B. Initial Submittal

Prior to the first application for payment, the Contractor shall submit the following information on the appropriate forms:

1. Schedule of Amounts for Contract Payment (Form 100): This form shall contain a breakdown of the labor, material and other costs associated with the various portions of the work and shall be the basis for the progress payments to the Contractor.
2. Project/Progress Schedule: The Contractor shall prepare a progress schedule in a form that is acceptable to both the Architect/Engineer and the Owner. The Schedule shall show the estimated progress of the entire project through the individual time periods allowed for completion of each discipline/phase including, but not limited to, time for submittals, earthwork, foundations, structural, mechanical, electrical, insulation, interior finishes, etc. For Projects with construction costs at \$250,000 and

greater, the Project Schedule shall be in the Critical Path Method (CPM).

C. Progress Payments

1. Periodic Estimates for Partial Payment shall be on a form provided by the Owner (Form 101) and submitted to the Architect/Engineer for payment by the Owner. Payment shall be requested for the labor and material incorporated in the work to date and for materials suitably stored, less the aggregate of previous payments and the 10% retainage.
2. Each and every Periodic Estimate for Partial Payment shall be accompanied by a revised/updated Schedule showing progress to date and project work. Minor Schedule changes may be shown as markups to the previously submitted Schedule. Major changes must be shown by a revised Schedule indicating what actions are anticipated to get the work completed by the contractual completion date. *If no Schedule (or revised Schedule) is provided the Architect/Engineer and/or Owner may return the pay request, or hold it, and will not pay for any portion of the Work until the appropriate Schedule, indicating all changes, revisions and updates, is provided.*
3. The Contractor, by submission of any partial pay request, certifies that every claim for partial payment is correct, true and just in all respects and that payment or credit had not previously been received. The contractor further warrants and certifies, by submission of any partial pay request, that all previous work for which payment has been received is free and clear of all liens, claims, security interests or encumbrances in favor of the Contractor, subcontractors, material suppliers or other persons or entities and does release the Owner from such.
4. Progress payments do not constitute official acceptance of any portion of the work.
5. In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due. Each subcontractor who preforms work greater than \$5,000, shall have 1% of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.
6. The Contractor may submit obligations/securities in a form specified in 18-1-301 Montana Code Annotated (MCA) to be held by a Financial Institution in lieu of retainage by the Owner. The Owner will establish the amount which would otherwise be held as retainage. Should the Contractor choose to submit obligations/securities in lieu of retainage, the Contractor shall be required to execute the Owner's AGREEMENT FOR DEPOSIT OF OBLIGATIONS OTHER THAN RETAINAGE (Form 120) prior to submission of any obligations/securities.

D. Substantial Completion

1. When the Contractor considers the work complete, he shall notify the Architect/Engineer and request a substantial completion inspection.
2. Prior to the inspection the Contractor shall complete the final clean-up of the project site which, unless otherwise stated in the Contract Documents, shall consist of:
 - a. Removal of all debris and waste.
 - b. Removal of all stains, smears, marks of any kind from all surfaces including existing surfaces if said damage is the result of the work.
 - c. Removal of all temporary structure and barricades.
3. If, during the inspection by the Architect/Engineer, any items are found to be incomplete, incorrect or in other ways not in compliance with the contract documents, the Contractor shall correct all such deficiencies within 30 days of the inspection date.

E. Final Completion and Payment

1. When the work is fully completed in accordance with the Contract Documents, the Contractor shall submit a final payment request, for 100% of the contract amount, including all approved contract Change Orders, on the appropriate form.
2. Final payment shall not be due until the Contractor has provided the Owner with an "Affidavit on Behalf of Contractor", and "Consent of Surety Company to Final Payment" forms.
3. The making of final payment will not relieve the Contractor from claims arising from the failure of the work to comply with the requirements of the Contract Documents. The warranty period shall commence with Substantial Completion and shall extend one (1) year from the date of Final Completion.

Article VII - Insurance

- A. Insurance, General: the Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, its agents, employees, representatives, assigns, or subcontractors.
- B. Hold Harmless and Indemnification: the Contractor agrees to protect, defend, and save the state, its elected and appointed officials, agents, and employees harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor, its agents, employees or any third parties on

account of bodily or personal injuries, death, or damage to property arising out of services or work performed or omissions or work or in any way resulting from the acts, negligent or otherwise, or omissions of the contractor, its agents, employees, assigns, and/or subcontractors under this contract.

- C. Contractor's Insurance: **insurance required under all sections herein shall be in affect for the duration of the contract which extends through the warranty period.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.
- D. The Contractor shall carry **Workers' Compensation Insurance.** Such Workers' Compensation Insurance shall protect the Contractor from claims made by his own employees, the employees of any Sub-contractor, and also claims made by anyone directly or indirectly employed by the Contractor or Sub-contractor. The Contractor shall require each Sub-contractor similarly to provide Workers' Compensation Insurance.
- E. Each Contractor shall carry occupancy coverage **Commercial General Liability Insurance** including coverage for premises; operations; independent contractor's protective; products and completed operations; broad form property damage and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General and Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this contract, or operations incidental thereto, whether such work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or by Sub-contractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain completed operations liability insurance required herein for a period of not less than one year after final payment or anytime the Contractor goes on to the location of the project.

1. The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers and political subdivisions thereof. Should the Contractor not be able list the state as an additional insured, the Contractor shall purchase a per occurrence Owner's/Contractor's Protective Policy (OCP) with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as that indicated above for the Contractor's Commercial General Liability Policy.
2. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.
3. The Contractor's insurance coverage shall be PRIMARY insurance as respects the state, its officers, elected and appointed officials, employees and volunteers. Any insurance or self-insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

F. **Property Insurance (All Risk):** the Contractor shall purchase and maintain Builder's Risk/Installation insurance on a 'special causes of loss form' ("all risk") upon the entire work, including vandalism and malicious mischief and theft of material stored on site or in transit, currently authorized at the site to the full insurable value thereof. Such insurance shall be in a company or companies authorized to do business in the state of Montana. This insurance shall include the interests of the Owner, the Contractor, Sub-contractors and sub-subcontractors in the work and shall include "All Risk" Insurance for physical loss or damage including, without duplication of coverage, fire, leakage, steam boilers, pressure vessels, oil or gasoline tanks, theft, vandalism and malicious mischief, and other such risks. If not covered under all risk insurance or otherwise provided in the contract documents, the Contractor shall effect and maintain similar property insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in an application for payment under sub-paragraph 9.3.2. Additionally, all certificates shall include the project name and A/E project number.

1. The form of policy for this coverage shall be "completed value of the work" for all new structures and "cost of the work for all renovations" of existing structures.
2. If by the terms of this insurance any mandatory deductibles are required, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim.

Article VIII- Miscellaneous Provisions

A. Construction Contractor Registration

The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA PRIOR to the Contract being executed by the State of Montana. A bidder must demonstrate that it has registered or promises that it will register immediately upon notice of award. If the prevailing bidder cannot or does not register in time for the Owner to execute the Contract within the fifteen (15) day time period of the notice of award the State may award to next lowest responsible bidder who meets this requirement. The Owner cannot execute a contract for construction nor issue a Notice To Proceed to a Contractor who is not registered (39-9-401(a) MCA).

B. Equal Employment Opportunity

All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

C. Assignment

The Contractor shall not assign the whole or any part of this contract or any monies due or to become due, hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

The Contractor and all subcontractors hereby assign to the State of Montana any and all claims or causes of action for any antitrust law violations or damages arising therefrom as to goods, materials and services purchased under the terms of this agreement, and any change order that may result from this agreement. This assignment is made on behalf of the Contractor and all subcontractors which may be hired or contracted with by the Contractor to furnish goods, materials or services required under the terms of this agreement.

D. Schedule of Work

The Contractor shall coordinate his operation in order that the Owner will have use of the existing facilities at all times during the normal working hours and interfere minimally with the Owner's operation.

Article IX - Arbitration

All disputes between the parties to this agreement arising out of or in connection with the contract documents shall be submitted for arbitration. If arbitration is selected by the Owner,

the Owner shall also select the number of arbitrators and the manner of arbitration, which shall be either: (1) arbitration according to the rules of the American Arbitration Association then in use within the construction industry; or (2) referral to one or more arbitrators mutually agreed upon by the parties.

When a written decision of the Architect/Engineer states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's/Engineer's decision becoming final and binding upon the Owner and Contractor.

The arbitration proceeding shall be conducted in accordance with Title 27, Chapter 5, MCA. Prior to the arbitration hearing, each party to the controversy shall be subject to the discovery provisions of the Montana Rules of Civil Procedure, Rules 26-37, inclusive. Any dispute regarding discovery may be submitted to the district court in the county in which the construction was performed, or the First Judicial District, Lewis and Clark County.

In responding to a claim brought by a Contractor, the Owner shall have a minimum of 45 days in which to respond to a revised claim prior to the arbitration hearing.

Article X - Architect/Engineer

A. Definition

The Architect/Engineer is:

NAME, ADDRESS, PHONE NUMBER

B. Responsibilities

The Architect/Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder. All interpretations and judgement will be consistent with the intent of the Contract Documents and will not show partiality to either the Owner or the Contractor.

C. Access to Site

The Architect/Engineer is the authorized representative of the Owner and will have access to the Work at all times.

Article XI - Record Keeping

Payrolls and basic records pertaining to the project shall be kept on a generally recognized

accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his authorized representative at mutually convenient times. Accounting records shall be kept by the contractor for a period of three years after completion and acceptance of the project by the Owner.